action into a personal one. *Butcher* v. *Cappon & Bertsch Leather Co.*, 148 Mich. 552, 112 N. W. 110; *Blyler* v. *Kline*, 64 Pa. St. 130. Again a replevy bond may be given the effect of an appearance by express statute. *Camp* v. *Cahn*, 53 Ga. 558; *Buice* v. *Lowman, etc. Mining Co.*, 64 Ga. 769. Such a provision would make the filing of a replevy bond, as of a bail bond, confer personal jurisdiction, since the defendant may get his property only on condition that he give the required consent. But the Texas statute is silent as to the effect of the replevy bond as an appearance. See 1 McEachin's Texas Civil Statutes, art. 258, 269, 1885. Hence the filing of such a bond, as it is not conditioned on paying the judgment but merely on returning the property, should not be treated as a general appearance. See *contra, Richard* v. *Mooney*, 39 Miss. 357, 358. But a replevy bond, even though not construed as a general appearance, gives consent to the attachment so as to waive technical defects in the summons. *New Haven Co.* v. *Raymond*, 76 Ia. 225, 40 N. W. 820; *McCord-Collins Mercantile Co.* v. *Dodson*, 32 Okla. 561, 121 Pac. 1085. *Contra, Burch* v. *Watts*, 37 Tex. 135. It would seem that since defendant is thereby shown to know of the action, the filing of the bond should similarly waive the technical defect of lack of constructive notice. *Peebles* v. *Weir*, 60 Ala. 413; *Reynolds* v. *Jordan*, 19 Ga. 436.

Bankruptcy — Exemptions — Homesteads — Validity of Homestead Exemption Acquired after Adjudication. — A state statute provided that the head of a family residing upon his own premises might, by executing and filing for record a proper declaration, convert them into a homestead exempt from levy and forced sale. Rev. Code of Mont. (1907), §§ 4694–4722. A bankrupt filed such a declaration after the adjudication against him. *Held*, that the exemption will be allowed. *In re Lehfeldt*, 225 Fed. 681 (U. S. Dist. Ct., Mont.).

The Bankruptcy Act provides that the bankrupt's title shall vest in the trustee as of the date of the adjudication, except as to property which is exempt. 1898, 30 Stat. at L. 544. The power of the bankrupt to hold as owner is completely determined as of that moment. See *Mueller* v. *Nugent*, 184 U. S. 1, 14. It would seem that the exemption, to be valid, should be then existing. The homestead statute in the principal case in terms gives no exemption until the filing of the declaration; and it and similar statutes have been so construed. See *Vincent* v. *Vineyard*, 24 Mont. 207, 214, 61 Pac. 131, 132; *Alexander* v. *Jackson*, 92 Cal. 514, 519, 28 Pac. 593, 594; *Nevada Bank* v. *Treadway*, 17 Fed. 887, 893. No doubt a liberal policy prevails in the construction of exemption statutes. See *Smith* v. *Thompson*, 213 Fed. 335, 336; *In re Crum*, 221 Fed. 729, 732. Thus, a partner has been allowed an exemption though dissolution of the firm was subsequent to the judgment against it. *O'Gorman* v. *Fink*, 57 Wis. 649, 15 N. W. 771; *Blanchard, Williams & Co.* v. *Paschal*, 68 Ga. 32. But even such a case is distinguishable, as no title in the creditor is involved. A number of decisions, however, in accord with the principal case, sustain exemptions acquired by a bankrupt after adjudication. *In re Mayhew*, 218 Fed. 422; *In re Culwell*, 165 Fed. 828; *In re Fisher*, 142 Fed. 205. Whatever policy there may be sustaining such a view, it seems insufficient to override the clear language of the statute, and one court at least has reached the opposite result. *In re Youngstrom*, 153 Fed. 98.

Bills and Notes — Checks — Certified Checks — Retraction of Certification Made under Mistake. — The drawer of a check payable to the plaintiff ordered the bank on which it was drawn to stop payment. The cashier, overlooking this stop order, certified the check. Before the plaintiff had changed his position, the cashier notified him of his error and attempted to retract the certification. The plaintiff now sues on the certified check with-

out showing that he has suffered any loss because of the mistake. *Held*, that he cannot recover. *Baldinger and Kupperman Mfg. Co.* v. *Manufacturers-Citizens Trust Co.*, 156 N. Y. Supp. 445 (N. Y. Sup. Ct.).

An exception to the general rule that money paid under a mistake of fact may be recovered when the parties can be put in *statu quo* has grown up in the law of negotiable instruments, where the drawee of a forged bill pays or accepts it. *Price* v. *Neal*, 3 Burr. 1354. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 62. An exactly parallel situation is presented when, as in the principal case, an instrument has been certified or paid by a bank under a mistake as to the amount of the drawer's deposit. In these cases, as in cases of a forged instrument, the holder and the payer have both parted with value in good faith; neither were negligent; and, if the situation is looked at as an entirety, their equities appear equal. See Ames, "The Doctrine of *Price* v. *Neal*," 4 HARV. L. REV. 297. Again, in both groups of cases, if the situation is further analyzed, the equity of the holder is found to rest solely on the fact that he has parted with value in exchange for a worthless claim to a desired *res*, to which he later acquired title. However, in the second type of cases it is well settled that the bank will be given relief if it notifies the holder in time to save his rights against the drawer and indorsers. *Irving Bank* v. *Wetherald*, 36 N. Y. 335; *Security Savings & Trust Co.* v. *King*, 69 Ore. 228, 138 Pac. 465; *Merchants National Bank* v. *National Bank of the Commonwealth*, 139 Mass. 513, 2 N. E. 89. This would seem to indicate that the doctrine of *Price* v. *Neal* has not become a broad principle of the law of negotiable instruments but remained a solitary anomaly.

BILLS AND NOTES — NEGOTIABLE INSTRUMENTS LAW — PRESENTMENT AND NOTICE OF DISHONOR — WHETHER NECESSARY TO CHARGE INDORSER SHOWN BY PAROL EVIDENCE TO BE JOINT MAKER OR SURETY.— The payee of a note which was indorsed on the back before delivery, sues the indorser without having demanded payment of the maker, offering parol evidence that the defendant was a co-maker. *Held*, that he cannot recover. *Overland Auto Co.* v. *Winters*, 180 S. W. 561 (Mo.).

The directors of a corporation gave to a bank, as collateral security for notes discounted for the corporation, a note made by one of their number to the order of another, and indorsed before delivery by all the directors. The bank now seeks to enforce the collateral note against the estate of one of the indorsers, without having presented it to the maker for payment. *Held*, that the indorser's estate is liable. *In re Marquardt's Estate*, 95 Atl. 917 (Pa.).

Both Missouri and Pennsylvania have adopted the Uniform Negotiable Instruments Law. See REV. ST. MO. 1909, ch. 86; 3 PURDON'S DIGEST (Pa.), 13 ed., 3250–3318. This law provides that "a person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity." See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 63. Some courts have held that this merely creates a presumption, which may be rebutted by oral evidence. *Mercantile Bank* v. *Busby*, 120 Tenn. 652, 657, 113 S. W. 390, 392. *Cf. Haddock, Blanchard & Co.* v. *Haddock*, 192 N. Y. 499, 85 N. E. 682. Such a construction is not only unwarranted by the language of the act, but defeats its purpose of securing uniformity. The better view, therefore, is that the statute fixes the legal effect of the signature, and that parol evidence of an intention to be bound as joint-maker, as surety, or in some other capacity cannot be allowed to give it a different effect. *First National Bank* v. *Bickel*, 143 Ky. 754, 137 S. W. 790; *Deahy* v. *Choquet*, 28 R. I. 338, 67 Atl. 421. See *Baumeister* v. *Kuntz*, 53 Fla. 340, 346, 42 So. 886, 888. Now an indorser is ordinarily entitled to demand and notice unless the instrument was made for his accommodation. See BRAN-